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No. 303.

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Reply Brf. of Platt v Bayne for Appellee.

IN THE

Supreme Court of the United States

Filed Dec. 1, 1902.

OCTOBER TERM, A. D. 1902.

SIMEON A. GRIN,
Appellant,

vs.

J. H. SHINE, United States Marshal, etc.,
Appellee.

Reply Brief of Appellee.

RICHARD BAYNE,
H. G. PLATT,
Attorneys for Russian Government

PLATT & BAYNE,
Of Counsel.

PERRAU PRESS 343 CLAY ST.

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SIMEON A. GRIN, Appellant, vs. J. H. SHINE, United States Marshal, etc., Appellee.	No. 303

REPLY BRIEF OF APPELLEE.

Appellant, in his brief, page 8, states, that the authority vested in E. H. Heacock, United States Commissioner, to hear and determine the extradition proceedings herein, "was not and never has been conferred " by any *court* of the United States, but merely at " tempted to be conferred by the District Judge, acting " not as a court but in chambers as the judge of the " court". This statement is not borne out by the record. On the contrary, the record shows that the Commissioner was especially authorized to act in such matters by an order of the court, entered in the minutes of the court, and not by the order of the District Judge acting in chambers.

Appellant further states that the necessary authority authorizing a Commissioner to act in such matters, should be conferred upon the Commissioner before the filing or presentation of the complaint. There is no such provision in section 5270 or elsewhere. Section 5270 simply provides that a Commissioner cannot issue his warrant of arrest unless he has been specially authorized prior thereto. There is nothing requiring him to be specially authorized prior to the filing of a complaint.

Appellant further contends that if the appointment of the Commissioner is valid, the second warrant to arrest was invalid for the reason that the District Judge and the Commissioner could not possess coequal authority over the case. This does not follow. A Commissioner may be authorized to act in all such matters by a general order of a court of the United States without reference being made to any particular case. That was done in this case. If, after such a general order had been made, appellant's point were true, then it would follow that both the District Court and the Commissioner would be deprived of jurisdiction, because it being exclusive in neither, but coequal in both, they would both be without authority to act. In this case, however, the District Court made a general order authorizing this Commissioner to act in such matters. The second warrant of arrest was then issued and made returnable before the Commissioner, he being authorized to hear the matter. There is nothing preventing a District Judge from authorizing a warrant to be so returned, and such was done.

In re Hinrich, 5 Blatch. 414,

wherein Justice Nelson of the Supreme Court ordered the warrant to be returned before himself or before the Commissioner.

Appellant's point that the complaint charges no embezzlement, has been sufficiently answered in our brief on file and in the opinion of the Circuit Court.

The complaint charges that the defendant received the money from his employers in the capacity of clerk; that he was at the time the clerk of his employers; that while so employed it was entrusted to him in his capacity as said clerk. There is no necessity of saying that he received it by virtue of his employment as clerk, if you state that he received it as clerk, or that it was entrusted to him as clerk, or that he received it in his capacity as clerk. This is all that is required by

Moore vs. *United States*, 160 U. S. 272–274.

The complaint charges that the defendant wrongfully, unlawfully and feloniously appropriated to his own use the property in question and embezzled it. The authorities cited by appellant do not sustain his contention that the omission of the word "fraudulent" makes the complaint fatally defective. *People* vs. *Mitchell*, 92 Cal. 590, cited by appellant, does not decide such a rule. On the contrary it supports our contention, as it holds that an allegation in a complaint charging forgery may simply use the words "make and forge" as the equivalent of the words "falsely make and forge" as the statute requires.

The two citations from *Bishop* on page 14 of appellant's brief, are not applicable to the case at bar. In

the complaint at bar the allegation is, that the defendant "wrongfully, unlawfully and feloniously appropri- " ated and converted to his own use, and embezzled". This is different from the allegations criticised in the two citations from *Bishop*.

Appellant's point as to the validity of the certificate of the United States Minister, has been sufficiently answered in our opening brief. His citation on page 19 *Oteiza* vs. *Cortez*, 136 U. S. 337–338, is not authority upon the point for which it is cited by appellant. This case holds only that depositions on behalf of the defendant are not admissible under the provisions of the Revised Statutes in extradition proceedings.

The use of the words in the certificate "as evidence for " similar purposes", criticised by appellant, finds a precedent in the case of *Cortez* vs. *Jacobus*, cited in *1 Moore on Extradition*, 514.

It is not necessary that the certificate should either specify the papers in detail or else should be separately attached to each paper, as claimed by appellant. An examination of all the precedents as found in *Moore on Extradition* show that the custom has been as followed by the Minister in this case, to attach a general certificate to all of the papers. See upon this point especially the reply of Secretary of State Freylinghuysen to our Embassador Fish, cited in *1 Moore on Extradition*, 481.

Appellant's eleventh point, that there is no evidence of embezzlement, is sufficiently answered in our opening brief, and in the opinion of Judge Morrow. His argument that the evidence shows an embezzlement of bank bills, goes only to the weight of the evidence,

which cannot be considered in habeas corpus proceedings. Most of the authorities cited by him upon this point, are not applicable. *State* vs. *Collins*, 72 N. C. 144, went off on the point that the embezzlement of a bank note was not the embezzlement of a treasury note, or vice versa. *Carr* vs. *State*, 16 So. Rep. 155, decided that the conversion of money was not proven by conversion of a check. *Johnson* vs. *State*, 11 Ohio St. 324, and *Block* vs. *State*, 44 Tex. 620, are based upon the distinction drawn in the statutes of those States between bank bills and money. *Commonwealth* vs. *Swinney*, 1 Va. Cas. 151, is in no sense in point. *McCauley* vs. *State* and *Johnson* vs. *State*, Tennessee cases, are the only decisions that are in accord with appellant's argument. This rule does not obtain in California, and if it did it would only go to the weight of the evidence and not to its competency.

These authorities are, however, not applicable to the evidence in this case. The witness Sporatov, assistant cashier of the bank, testified as follows: "I issued 15,000 roubles in '100 rouble' bank notes, and 10,000 roubles in '500 rouble' bank notes." The witness Follendorf, assistant auditor of the bank, testified that he saw Grin when he received 25,000 roubles. Fillipoff, another witness, says he saw Grin's receipt, which was worded as follows: "Received 25,000 roubles S. I. Grin." Ottens, manager of the bank, says that his bank paid 25,000 roubles to Grin. The complaint alleges the embezzlement of 25,000 roubles in Russian money. This evidence is all competent evidence, and therefore not reviewable in this proceeding, even though it might

not be sufficient in some jurisdictions to sustain a conviction, which, however, we do not concede.

Appellant's authorities cited on page 29, that the evidence is insufficient to show that the defendant appropriated the money, only go to the weight of the evidence. In none of the cases from California cited by appellant did the facts show, as in this case, receipt of the money, failure to apply it as directed, and secret flight from the country with the money.

The authorities from California cited by appellant to support his contention that the confession of defendant is not evidence of embezzlement, do not sustain the contention. They simply hold that a confession alone is not sufficient without some other proof of the commission of crime. This simply goes to the weight of the evidence.

The appellant claims that the mandate is a nullity because it does not designate in terms the kind of embezzlement so as to show it to be within the treaty.

This is not necessary. The mandate mentioned the crime of embezzlement. This crime is one of those mentioned in the treaty. The evidence shows that it is embezzlement by a hired person of property whose value exceeds three hundred roubles. This is all that is necessary, either under the treaty or under the revised statutes.

Respectfully submitted,

Attorneys for Russian Government.

Of Counsel.